

## REMARKS

This preliminary amendment is submitted with a request for continued examination. Claims 1-28 are pending. In the Office Action, the Examiner rejects Claims 1-7 under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter. Claims 1-3 and 5-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 7,197,303 to Sakai et al. (“Sakai”) in view of U.S. Pat. No. 5,528,596 to Fisher et al. (“Fisher”). Claim 4 is objected to as being dependent upon a rejected base claim, but is indicated as being allowable if rewritten in independent form.

Applicants have amended independent Claims 1, 8, 12, 16, and 21 to clarify patentable distinctions between the claimed invention and cited references. Claims 2, 3, 4, 10 and 14, 15, 17, 19, and 22-25 have been cancelled as a result of the amendments to the independent claims. In light of the amendments and subsequent remarks, Applicants respectfully submit that the claims are in condition for allowance.

### The Rejection of Claims under §101 is Overcome

The Office Action alleges that Claims 1-7 are directed to non-statutory subject matter in that Claims 1-7 are allegedly not tied to another statutory class and do not transform any underlying subject matter to a different state or thing. In this response, Applicants have cancelled Claims 2-4 and accordingly submit that the § 101 rejection of Claims 2-4 is rendered moot. Applicants have amended Claim 1 such that several steps are performed by a controller, which is a particular machine. *See, e.g.*, page 7, lines 19-25 of the present application. Applicants submitted a similar amendment in the Response After Final filed on June 19, 2009. However, the previously submitted amendment was not entered as the Examiner stated the amendment would require a new search and further consideration. Nevertheless, the Examiner noted in the Advisory Action of July 8, 2009 that “Applicant’s amendments made to independent claim 1 would overcome the rejection of claims 1-7 under 35 USC 101.” For at least the foregoing reasons, Applicants respectfully submit the rejection of independent Claim 1 under §101 is overcome. Since Claims 5-7 include each of the recitations of Claim 1, Applicants respectfully submit that the rejection under §101 of Claims 5-7 is overcome.

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The Rejection of Claims under §103(a) is Overcome

Applicants have amended independent Claim 1 to include the recitations of dependent Claim 4, which was indicated as being allowable if rewritten in independent form as well as intervening Claims 2, 3, and 14. Accordingly amended Claim 1 recites a method comprising establishing, by a controller, a radio channel candidate. The method further comprises processing, by the controller, the radio channel candidate with potentially interfering signals using an interference cancellation technique and calculating a carrier to interference ratio for a selected carrier frequency of the radio channel candidate and the potentially interfering signals. The method additionally comprises calculating, by the controller, at least one dominant interference ratio being the ratio of a signal level of a strongest potentially interfering signal with respect to a sum of signal levels of other potentially interfering signals. The method also comprises using, by the controller, the dominant interference ratio to establish an indication as to an interference cancellation gain provided by the interference cancellation technique, the interference cancellation gain being used to establish a criteria for channel selection. The method further comprises using, by the controller, the interference cancellation gain to modify the carrier to interference ratio. The method additionally comprises using, by the controller, a criteria based on the dominant interference ratio and on the modified carrier to interference ratio in a channel selection process for selecting a channel for the connection to be established.

Accordingly, since Claim 1 now includes each of the recitations of Claim 4 and intervening Claims 2, 3, and 14 rewritten in independent form, Applicants respectfully submit that the rejection of Claim 1 under § 103(a) is overcome and Claim 1 is in condition for allowance for at least those reasons the Examiner found Claim 4 to be allowable. Applicants have further amended independent Claims 8, 12, 16, and 21 to include substantially similar recitations as amended Claim 1. Therefore, Applicants respectfully submit that the rejection of independent Claims 8, 12, 16, and 21 under § 103(a) is also overcome and independent Claims 8, 12, 16, and 21 are in condition for allowance for at least those reasons the Examiner found Claim 4 to be allowable.

The Rejection of the Dependent Claims is Overcome

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Because each of the dependent claims includes each of the recitations of a respective independent base claim, Applicants further submit that the dependent claims are patentably distinguishable from the cited references, taken alone or in combination, for at least those reasons discussed above. Accordingly, applicants respectfully submit that the rejections of the dependent claims are overcome and the dependent claims are in condition for allowance.

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### CONCLUSION

In view of the amended claims and remarks presented above, it is respectfully submitted that all of the present claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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